

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

NEXSTAR MEDIA, INC., d/b/a KFOR-TV,
et al.,

Plaintiffs,

-v.-

No. 5:24cv980-J

RYAN WALTERS, in his official capacity
As Superintendent of Public Instruction,
And in his individual capacity, and

DAN ISETT, Director of Communication
for the Oklahoma State Department of Education,
in his official capacity,

Defendants.

**DEFENDANTS' MOTION REQUESTING AN EVIDENTIARY
HEARING TO DETERMINE WHETHER AND TO WHAT EXTENT
PLAINIFFS ARE ENTITLED TO FEES AND/OR COSTS**

Defendants RYAN WALTERS, in his official capacity as Superintendent of Public Instruction for the State of Oklahoma, and DAN ISETT, in his official capacity as Director of Communication for the Oklahoma State Department of Education, respectfully request that this Court hold an evidentiary hearing pursuant to LCvR78.1 and Fed. R. Civ. P. 54(d)(2)(C), 43(c), and 78(a) and to determine what, if any, fees and costs should be awarded to the Plaintiffs. In support of this request, Defendants state as follows:

1. The instant case commenced on September 23, 2024, and final judgment was entered on December 11, 2024. ECF Nos. 1; 58. As such, the formal litigation from commencement of the action to conclusion lasted 79 calendar days.

2. On February 10, 2025, Plaintiffs' attorneys filed a motion requesting fees and costs be awarded to them in the amount of \$366,044.60 in attorneys' fees and \$10,550.14 in costs. ECF No. 59, p.1. There, they argued, *inter alia*, that there are no local attorneys who had their level of expertise regarding First Amendment litigation, that the case was so novel and complex as to warrant their requested fees, and that the hourly rates they requested were reasonable vis-à-vis their level of experience and expertise in this area of law. *See generally id.*

3. On February 21, 2025, Defendants filed their response in opposition to awarding fees and costs. ECF No. 61. There, the Defendants argued that the fees and costs requested are exorbitant, that the case was not so novel or complex as to merit awarding fees, and that the Plaintiffs have not met their burden to show that they are entitled to the fees and costs they request. *See generally id.*

4. The Defendants respectfully submit that the costs, fees, and time the Plaintiffs have submitted are exorbitant and unnecessary, given the facts of this case and the expedited resolution. *See Clark v. Penn Square Mall Ltd. Partnership*, No. 10cv29, 2011 WL 1990144, at *2 (W.D. Okla. May 23, 2011) (“As a general rule, an evidentiary hearing is required when deciding fee award”); *Thomas v. Crush Enterprises, Inc.*, No. 16cv773, 2017 WL 10379251, at *4, n.8 (W.D. Okla. Nov. 14, 2017) (“The court is

mindful that ‘an evidentiary hearing is generally preferred, if not required, when factual disputes exist in connection with a request for attorney fees’”) (quoting *Michael A. Cramer, MAI, SPRA, Inc. v. United States*, 47 F.3d 379, 383 (10th Cir. 1995)).

5. Should the Court order an evidentiary hearing, the Defendants have no objection to Plaintiffs’ counsel appearing via electronic or telephonic means

WHEREFORE, the Defendants respectfully request that the Court order an evidentiary hearing to determine whether the costs, time, and expenses were necessary to this case, and that the issues presented herein were so novel or complex as to merit awarding costs and fees and, if so, in what amounts.

Respectfully submitted,

/s/ *Jacquelyne K. Phelps*
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Counsel for Defendants

CERTIFICATE OF SERVICE

The undersigned, Jacquelyne Phelps, an attorney with the Oklahoma State Department of Education, hereby certifies that on February 21, 2025, I filed the foregoing with the Clerk of the Court using the CM/ECF system.

Respectfully Submitted,

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